REMARKS

Reconsideration of the above-identified application in view of the amendments above and the remarks following is respectfully requested.

Claims 1-15, 19-24, 26-35, 39, 44-47, 51-55 are currently pending in this Application. Claim 35 is allowed. Claims 25, 36-38, 40-43, 48 and 50 have been withdrawn from consideration.

Specification

In section 2 of the report, the examiner is objected to the specification as it fails to provide proper antecedent basis for the claimed subject matter. Applicant respectfully disagrees. However, in order to expedite the examination process, Applicant adds two paragraphs to the specification.

In particular, the examiner argued that the specification fails to disclose a venous port being adapted to be implanted in a surface vein. In order to overcome the examiner rejection, Applicant added the following paragraph:

> *"In an exemplary embodiment of the invention, the catheter is implanted to withdraw fluids from a vein. In such an embodiment, the catheter functions as a venous port which is adapted to be implanted in a surface vein."*

The basis for this paragraph may be found, *inter alia,* in the Abstract and in FIG. 1A-1E and FIG. 2A and the related text of the present application.

The examiner further argued that the specification fails to disclose relative movement of the plurality of extensions with respect to the at least one aperture, from the first position to the second position, operating to open at least one blood passageway among the plurality of extensions. In order to overcome the examiner rejection, Applicant added the following paragraph:

> *"In an exemplary embodiment of the invention, the one or more extensions are moved, in relation to the aperture, from the first position to the second position, so as to open one or more blood passageway among the plurality of extensions."*

The basis for this paragraph may be found, inter alia, in FIGS. 2A-2D and the related text of the present application.

Applicant believes that the amended specification now provide proper antecedent basis for the claimed subject matter.

Claims Objections

In section 3 of the report, the Examiner is objected to Claims 1-15, 19-24, 26-35, 39, 44-47, and 51-55 because of informalities in Claims 1, 11, 51, and 54. Claims 1, 11, 51, and 54 have been amended according to the Examiner's suggestions. Applicant believes that this rejection is moot as the pointed informalities where removed according to the Examiner's suggestions.

35 U.S.C. § 112 Rejections

In section 5 of the report, the examiner rejected Claims 1-15, 19-24, 26-35, 39, 44-47, and 51-55 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant amended the claims, without prejudice, according to the Examiner kind suggestion. Applicant believes that the amended claims are now definite under 35 U.S.C. 112, second paragraph.

35 U.S.C. § 103 Rejections

In section 6 of the report, Claims 1-15, 19-24, 26, 27, 32-34, 39, 44-47, and 51-55 are rejected under 35 U.S.C. 103(B) as being unpatentable over U.S. Patent Application Publication No. 2003/0167038, (hereinafter: "*Yozu*").

With regard to claim 1, Applicant respectfully disagrees with the rejections. Not all of the claim limitations are explicitly shown in the *Yozu* and there is no evidence or suggestion in *Yozu* of modifying *Yozu*'s occlusion catheter for the ascending aorta to a venous port adapted to be implanted in a surface vein and withstand unimpeded intake of fluid for a period of one or more days.

(A) The parameter of length, namely a hollow tube that has a length of not more than 10, is deemed a matter of design choice (lacking in any criticality), well within the skill of the ordinary artisan, obtained through routine experimentation in determining optimum results.

In addition, the Examiner argues that:

(B) a venous port adapted to be placed through a body tissue and is capable of being implanted in a surface vein for the purpose of unimpeded intake of fluid through an aperture thereof;

(C) If the at least one aperture is blocked by an impediment, the relative movement of the plurality of extensions with respect to the at least one aperture is considered to be capable of dislodging the impediment from the at least one aperture.

(D) The hollow tube is sized and shaped so that it is adapted to be and is capable of being implanted in a surface vein and of withstanding the unimpeded intake of fluid for a period of one or more days.

Applicants respectfully disagree with and refute each of the above arguments by the Examiner.

With regard to Point (A), Applicant respectfully disagrees that the length of the hollow tube as being less than 10 cm is deemed a matter of design choice (lacking in any criticality). The short length of the hollow tube is selected as it is adjusted for implanting the venous port for intake of fluid in the surface vein. A longer length may complicate the implantation process as the hollow tube may be erroneously guided away from the surface vein. This adaptiveness is described, *inter alia*, in Paragraph [0026] of the present application explicitly defines a short length venous port:

> *"a short port adapted for entering a vein, to which a fluid conveying tube is attached outside of the body. Such a port may be, for example, shorter than, for example, 10 or 5 cm, and may have a section outside the body which is shorter than, for example, 10 or 5 or 1 cm. This external section may be, for example, thicker or winged, to prevent entry into the body and/or may include an inner threading for attachment of a tube."*

In order to expatiate the examination process, Applicant amended claim 1, *without prejudice*, to clarify the scope of the claimed invention in the light of the differences between *cited references* and the present invention. Amended claim 1 now explicitly recites a hollow tube that has a *portion which is sized and shaped to prevent the insertion of more than 10 cm of the hollow tube in the body of a patient when*

implanted. The basis for this change is found, *inter alia*, in the aforementioned Paragraph [0026] of the present application.

With regard to Point (B), Applicant respectfully disagrees that *Yozu* teaches a venous port adapted to be placed through a body tissue and is capable of being implanted in a surface vein. *Yozu* describes a method and an occlusion catheter for the ascending aorta capable of obstructing the blood flow within the ascending aorta without inserting through the femoral artery, see *Yozu* Abstract. *Yozu*'s device includes extension, such as balloons to obstruct the blood flow within the ascending aorta and aperture for releasing a drug. *Yozu* does not describe, explicitly or implicitly, any aperture that allows intake of fluids. It should be noted that the Examiner refers to paragraphs [0060] and [0071] of *Yozu*, however these paragraphs only describe an aperture for supply or drainage of fluid to a balloon in order to obstruct a blood flow. Furthermore, *Yozu* does not describe extensions which may be used for facilitating the unimpeded intake of fluid, as recited in claim 1. As such, *Yozu* cannot be modified for vein implantation, as suggested by the Examiner pertaining to Point (B).

With regard to Point (C), Applicant respectfully disagrees that *Yozu* teaches a relative movement of the extensions for dislodging an impediment from an intake aperture. *Yozu*'s extensions are sized and shaped for obstructing blood flow when inflated, see *Yozu*'s figures. As *Yozu*'s extensions are sized and shaped for obstructing blood flow when inflated they cannot be modified or used for dislodging impediments.

With regard to Point (D), Applicant respectfully disagrees that *Yozu* teaches a hollow tube that is capable of being implanted in a surface vein and of withstanding the unimpeded intake of fluid for a period of one or more days. *Yozu* is designed as a surgical device that is sized and shaped for being inserted directly into the ascending aorta, in the vicinity of the heart, to obstruct the blood flow therewithin so as to enable delivery of a cardiac muscle protective drug, see *Yozu* summary and Abstract. As such, the hollow tube has to be longer than 10cm and designed for short periods stay in the body of the patient. Therefore, *Yozu* cannot be implanted in the surface vein for a periods of few days, as explicitly recited in original and amended claim 1.

Based on the above, Applicant contends that the Examiner did not provide any reasoning with some rational underpinning to support the legal conclusion of obviousness pertaining to points (B)-(D) in Office Action dated June 26, 2009.

In view of the above, it is submitted that independent claim 1 is therefore patentable over the cited references, at least for the reasons described above. Dependent claims 2-15, 19-24, 26, 27, 32-34, 39, 44-47, and 51-55 dependent thereon are patentable at least by virtue of their patentable parent claim.

In section 8 of the report, Claims 28-30 were rejected under 35 U.S.C. § 103(B) as being obvious over *Yozu* and over U.S. Patent 5,857,998 *Barry* et al.

(hereinafter: *Barry*). It is believed that Claims 28-30 are now allowable as being dependent from allowable independent amended Claim.

In section 9 of the report, claim 31 has been rejected under 35 U.S.C. §103(B) as being unpatentable over *Yozu* in view of Zadno-Azizi in US Patent No. 6,958,059. It is believed that Claim 31 is now allowable as being dependent from allowable independent amended Claim.

In view of the above amendments and remarks it is respectfully submitted that claims 1-15, 19-24, 26-30, 31-35, 44-47 and 51-55 are now in condition for allowance. A prompt notice of allowance is respectfully and earnestly solicited.

Respectfully submitted,

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Date: October 26, 2009

Enclosures:

- Petition for Extension (One Month)
- Request for Continued Examination (RCE)